

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

GEORGE ROBERTS, JR.,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 3:23-265
)	Judge Nora Barry Fischer
COMMONWEALTH OF PENNSYLVANIA,)	Magistrate Judge Keith Pesto
KEN HOLLIBAUGH, Warden S.C.I.)	
Somerset, DISTRICT ATTORNEY OF)	
FAYETTE COUNTY,)	
)	
Respondents.)	

MEMORANDUM ORDER

AND NOW, this 17th day of January, 2025, upon consideration of the Report and Recommendation filed by United States Magistrate Judge Keith A. Pesto on October 26, 2023, (Docket No. 8), recommending that Petitioner George Roberts' § 2254 Petition (Docket No. 1) and Amended Petition (Docket No. 4) be dismissed as untimely because they were filed in 2023 many years after the expiration of the 1-year statute of limitations set forth in 28 U.S.C. § 2244(d), and that no certificate of appealability should issue, and directing that objections be filed within 14 days, and the subsequent order granting Petitioner an extension of time to file his objections, (Docket No. 12), Petitioner's Objections which were therefore timely filed on December 7, 2023, (Docket No. 11), and upon independent review of the record and de novo consideration of the Magistrate Judge's Report and Recommendation of October 26, 2023, (Docket No. 8),

IT IS HEREBY ORDERED that the Report and Recommendation [8] is ADOPTED as the Opinion of this Court;

IT IS FURTHER ORDERED that Petitioner's Objections [11] are OVERRULED, as he has failed to meet his burden to show that he is entitled to statutory or equitable tolling and/or that the actual innocence exception to the AEDPA statute of limitations would apply, *see e.g., Pace v. DiGuglielmo*, 544 U.S. 408 (2005) (statute of limitations is not tolled during period where an untimely state PCRA petition is pending); *Wallace v. Mahanoy*, 2 F. 4th 133 (3d Cir. 2021) (citations omitted) ("To satisfy the demanding actual innocence exception, a petitioner must (1) present new, reliable evidence of his innocence; and (2) show by a preponderance of the evidence that it is more likely than not that no reasonable juror would have convicted him (i.e., a reasonable juror would have reasonable doubt about his guilt) in light of the new evidence");

IT IS FURTHER ORDERED that the Petition (Docket No. 1) and Amended Petition (Docket No. 4) are DISMISSED as untimely;

IT IS FURTHER ORDERED that no certificate of appealability shall issue because Petitioner has not made a substantial showing of the denial of a Constitutional right or shown that jurists of reason would disagree that the Petition and Amended Petition are untimely and that there has not been a sufficient showing that the limitations period should be tolled or that the actual innocence exception applies, *see e.g., Slack v. McDaniel*, 529 U.S. 473 (2000); and,

IT IS FURTHER ORDERED that the Clerk of Court shall mark this case CLOSED.

s/Nora Barry Fischer
Nora Barry Fischer
Senior U.S. District Judge

cc/ecf: Magistrate Judge Keith A. Pesto
All counsel of record.

cc: George Roberts, Jr. HT-1247
S.C.I. Somerset
1600 Walters Mill Road
Somerset, PA 15510 (via first class mail)